
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-129
Acapulco Car Service, Inc.)	
WPRJ622)	NAL/Acct. No. 200332380002
Brooklyn, NY)	
)	FRN: 0004-5052-44

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 8, 2002

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Acapulco Car Service, Inc. ("Acapulco") has apparently violated Section 1.903(a) of the Commission's Rules (the "Rules")¹, by operating radio transmitting equipment on an unauthorized frequency of 36.50 MHz. We conclude that Acapulco is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On July 9, 2002, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 35.80 MHz and 36.50 MHz in Brooklyn, NY, to assess compliance in the Private Land Mobile Radio Services. The agents determined that Acapulco operated mobile units on a frequency of 36.50 MHz. There was no evidence of a Commission authorization for operation on the frequency 36.50 MHz in Brooklyn, NY.

3. On July 10, 2002, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 35.80 MHz and 36.50 MHz in Brooklyn, NY. The agents again determined that Acapulco operated mobile units on a frequency of 36.50 MHz. The agents conducted a station inspection and determined that Acapulco's base transmitter, located at 4911 8th Avenue, Brooklyn, New York 11220, was operating on the licensed frequency, 35.80 MHz. At the time of inspection, the agents advised Everado Torres, owner of Acapulco, that Acapulco's mobile units were operating on an unauthorized frequency of 36.50 MHz.

4. On July 12, 2002, the New York Office sent a Notice of Violation to Acapulco for operation on an unauthorized frequency of 36.50 MHz. On August 9, 2002, Acapulco submitted a reply to the Notice of Violation, admitting using the frequency 36.50 MHz.

¹ 47 C.F.R. § 1.903(a).

III. DISCUSSION

5. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. A review of Commission's records showed that Acapulco was granted authority under its license, WPRJ622, to operate one base station and 45 mobile units on a frequency of 35.80 MHz.

6. Based on the evidence before us, we find that, Acapulco Car Service, Inc. operated mobile units on July 9, 2002, and July 10, 2002, on an unauthorized frequency of 36.50 MHz, in willful² and repeated³ violation of Section 1.903(a) of the Rules.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁵ ("Act") which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Acapulco Car Service, Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully violating Section 1.903(a) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Acapulco Car Service, Inc.,

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380002 and FRN: 0004-5052-44.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380002.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the [relevant Division]. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Acapulco Car Service, Inc., 4911 8th Avenue, Brooklyn, NY 11220.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

⁸ See 47 C.F.R. § 1.1914.